



INFORMATION SHEET

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Lending items protected by copyright

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This information sheet is for libraries, resource centres and other organisations which lend copyright material to borrowers or members. If you want to charge people for the right to borrow copyright material, please see our information sheet *Renting items protected by copyright*.

For information about our other information sheets, publications and training program, see our website <http://www.copyright.org.au> or contact us (see contact details at the bottom of the page).

The purpose of this information sheet is to give general introductory information about copyright. If you need to know about how the law applies in a particular situation, please get advice from a lawyer.

A Copyright Council lawyer may be able to give you free legal advice about an issue not addressed in an information sheet. This service is primarily for professional creators and arts organisations but is also available to staff of educational institutions, governments and libraries. For further information about the service, see <http://www.copyright.org.au> (click the Advice button) or our information sheet *Australian Copyright Council: who we are, what we do*.

We update our information sheets from time to time. Check our website to make sure this is the most recent version.

Key Points

- Generally, copyright is not infringed by lending material, since this is not one of the rights reserved to the copyright owner.
- However, statements on electronic resources such as software and CD-ROMs limiting the people entitled to use the material may in some cases affect the purchaser's rights to lend the resources.
- Also, where material has been acquired under licence (for example, publications on CD-ROM or other electronic material), or material was donated or sold to the library under specific conditions, lending the material might in some cases breach a contract.

Rights of copyright owners

Copyright owners have rights to control a number of uses of their material, including the rights to **reproduce** or copy the material (in analogue or digital forms), **upload** it to intranet or internet sites, **email** or **fax** the material.

Owners of copyright in sound recordings, in material on sound recordings and in computer software also have the right to control **rental** of such items. (Other copyright owners do **not** have the right to control rental).

Generally, if you want to use copyright material in these ways, you need the copyright owner's permission, unless an exception to infringement applies. See our information sheet *An introduction to copyright in Australia* for further information on these issues.

The rights of the copyright owner do not include the right to **lend** copyright material. Therefore, lending copyright material does not in itself infringe copyright. However, in some cases, there are further issues you need to consider that may affect your right to lend material protected by copyright.

What does “lending” mean?

For copyright purposes, there is a distinction between “lending” and “renting”. This distinction is only relevant in relation to computer software, sound recordings and material on or in sound recordings: copyright owners are not entitled to control rental of other types of material.

In essence, “lending” takes place if you allow another person to use the material for a period of time without requiring any payment for the loan. If payment is required, the arrangement is a “commercial rental arrangement”. Where such arrangements involve sound recordings (such as recorded music, interviews or talking books) or computer software (including software in CD-ROMs and computer games), permission from the relevant copyright owner is needed.

If you charge any type of fee (apart from late fees or returnable deposits) for borrowing sound recordings or computer software, you may wish to get legal advice on whether the arrangement might be a “commercial rental arrangement”, in which case you would need permission from the copyright owners. You may charge as much as you like for the right to borrow material **other than** sound recordings and computer software. We discuss rental of software and sound recordings in our information sheet *Renting items protected by copyright*.

When might lending copyright material get you into trouble?

Infringing copies of digital material

When we talk about infringing copies, we mean copies that were made without the permission of the copyright owner, where no exception to infringement applies (whether the copies were made by individuals for their own use or by pirate organisations on a commercial basis).

Prior to 1 January 2005, owning, lending or playing infringing copyright items did not generally give rise to legal liability for copyright infringement. As a result of changes to the Copyright Act that come into effect on 1 January 2005, someone who plays an infringing copy of a DVD, CD, CD-ROM, MP3 or other digital copyright material, may now infringe copyright.

People who “authorise” others to infringe copyright may themselves be liable for infringement. If a library owns an infringing copy of a DVD, for example, and lends it to someone, the borrower may infringe copyright if he or she plays the DVD. In this situation, the library could also be liable for infringement, since lending the infringing DVD involves authorising (condoning or permitting) the borrower to play it, which may be an infringement.

As a matter of good practice, most libraries make an effort to ensure they do not have material in their collection that infringes copyright. As of 1 January 2005 this has become essential, at least for digital material. For non-digital material, it remains the case that you will not infringe copyright by acquiring, lending or borrowing infringing items, unless you authorised the infringement. Of course, the person who made the copy is liable for infringement.

Digital material (CD-ROMs, e-books, computer games & software)

To access material in digital form, you have to use a computer or other equipment that makes copies of the material (usually in temporary and transitory form) in order to read it. For this reason, almost any use of digital material involves the rights of the copyright owner – unlike, for example, reading a printed book or journal.

Licence terms and conditions

When you buy digital material such as computer games or software, you also get a licence from the copyright owner to use the material in certain ways. The ways in which you can use the material are determined by the terms and conditions of the licence. Many such licences limit the number of users entitled to access the material, or limit the number of machines to which it can be installed. If you allow the material to be used in ways not allowed by the licence, you are likely to breach the contract.

Authorising infringement

In some cases, lending out digital material may infringe copyright. This would be the case if by lending the material you are authorising users to upload it to their own computers, knowing that this would involve making a copy outside the scope of the licence. For example, if you lend out digital material where the licence limits the number of users, or limits use to the purchaser, or to use on a particular premise (“site licence”), you may be authorising infringement.

Statements on packaging limiting use of the material

Some items (including some books and videos) have notices printed on them which state that certain uses, such as lending, are prohibited. However, for material other than, for example, CD-ROMs, computer games and software, if you are using the material in a way that is not controlled by the copyright owner, (such as by lending it) such statements do not restrict what you can do.

If you have entered an agreement under which lending, or other uses of, the material are prohibited, you may be contractually bound not to use the material in such ways. This will not normally be the case unless you have a direct relationship with the person imposing the conditions and this condition forms part of the contract under which you bought the item.

Material donated under certain conditions

Sometimes, people sell, donate or bequeath material to libraries but set conditions upon the donation. This can especially be the case when the material is personal or sensitive in nature. Such conditions sometimes include a requirement that access to the material be limited, or that the material only be made available within the library and not lent out. Where such conditions have been made, it is important to respect them, even if breaching the conditions would not infringe copyright. Failure to do so might invalidate the library's ownership of the material.

Copyright material imported without permission

In some cases, if copyright material has been imported into Australia without the copyright owner's permission, distribution of the material may infringe copyright if it affects the copyright owner prejudicially. This may be the case even if the copies were made legitimately in the country of origin. There is an argument that "distribution" in this context might include making such material available for loan to the public.

You may import non-infringing sound recordings (for example, CDs, tapes and records) and in some cases software and books for this purpose, because the copyright owner's rights to control the "parallel importation" of copyright material in sound recordings, software and books has largely been removed.

For more information on the importation provisions in the Copyright Act, see our information sheet *Importing copyright items*.

Common questions

Can a library lend videos or DVDs even though they are being rented out by a local video store?

Yes, provided there is nothing in the terms and conditions under which the library acquired the video or DVD which prohibits lending.

Can we charge borrowers a deposit before they borrow material?

Yes, provided that, for sound recordings and items containing computer programs, the deposit is aimed at ensuring the return of the item, and is returned to the borrower upon its safe return.

Further information

For further information about copyright, see our website—<http://www.copyright.org.au> or contact us.

Reproducing this information sheet

You may download and print one copy of this information sheet from our website for your reference, or you may purchase a printed copy from our online shop—<http://shop.copyright.org.au>—or direct from us.

Australian Copyright Council

The Australian Copyright Council is a non-profit organisation whose objectives are to:

- assist creators and other copyright owners to exercise their rights effectively;
- raise awareness in the community about the importance of copyright;
- identify and research areas of copyright law which are inadequate or unfair;
- seek changes to law and practice to enhance the effectiveness and fairness of copyright;
- foster co-operation amongst bodies representing creators and owners of copyright.



Australian Government



The Australian Copyright Council has been assisted by the Commonwealth Government through the Australia Council, its arts funding and advisory body, through its Policy, Communication and Planning Division.

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